

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>
Office: (317) 232-2701
Facsimile: (317) 232-6758

IN THE MATTER OF THE PETITION OF)
INFINITY FIBER, LLC, FOR A CERTIFICATE)
OF TERRITORIAL AUTHORITY TO)
PROVIDE FACILITIES-BASED LOCAL)
EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES,)
INCLUDING CALLER ID, THROUGHOUT)
THE STATE OF INDIANA AND FOR AN)
ORDER DECLINING TO EXERCISE)
JURISDICTION PURSUANT TO I.C. 8-1-2.6)

CAUSE NO. 42898

FILED

AUG 25 2005

INDIANA UTILITY
REGULATORY COMMISSION

On July 8, 2005, Infinity Fiber, LLC ("Infinity") filed its Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission"), seeking confidential treatment of financial statements to be submitted in support of its Petition.

Infinity seeks confidential protection pursuant to I.C. §8-1-2-29 and the Commission's procedural rule found at 170 I.A.C. 1-1.1-4, and relies on the trade secret exception to public disclosure of public records found at I.C. §5-14-3-4 and I.C. §24-2-3-2 as the basis for its confidentiality claim.

The Commission rule found at 170 I.A.C. 1-1.1-4 establishes procedures for claiming that material to be submitted to the Commission is confidential. This rule, among other requirements, states that a written application for a finding of confidentiality must be filed on or before the date (if any) the material is required to be filed (170 I.A.C. 1-1.1-4(a)), and the application shall be accompanied by a sworn statement or testimony that describes: the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. §8-1-2-29 and I.C. §5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. 1-1.1-4(b). Material filed with or submitted to the Commission prior to a finding of confidentiality is available for public inspection and copying. 170 I.A.C. 1-1.1-4(e).

Ten (10) days following receipt of an application for confidentiality the Commission may: (1) find the information to be confidential in whole or in part; (2) find the information not to be confidential in whole or in part; (3) issue a protective order or docket entry covering the information; and/or (4) find that information found to be not confidential should be filed in accordance with 170 I.A.C. 1-1.1-4. 170 I.A.C. 1-1.1-4(a).

The Presiding Officer or any party may request an *in camera* inspection to hear argument on confidentiality of the material. 170 I.A.C. 1-1.1-4(c).

Indiana Courts describe trade secret information as containing four (4) elements: 1) information; 2) deriving independent economic value; 3) not generally known, or readily ascertainable by proper means by others who can obtain economic value from its disclosure or use; and 4) the subject of efforts, reasonable under the circumstances to maintain its secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. App. 2000.)

Such recent determinations, however, do not relieve any person desiring confidential protection of a public record to be submitted to the Commission of the obligation to petition and factually demonstrate through Direct Testimony/Affidavit that the information should be exempt from public disclosure. They also do not bind the Commission in future proceedings from making determinations based on the facts presented at that time.

While Infinity submitted a Motion requesting confidential treatment for the above-mentioned data, that Motion is not supported by an affidavit verifying the accuracy of the information contained in the Motion, as is required under Commission rules.

The Presiding Officer, having reviewed the Motion and its accompanying data, finds that Petitioner should file a Motion for Confidential Treatment complying with the requirements of 170 I.A.C. 1-1.1-4.

IT IS SO ORDERED.

August 25, 2005
Date

Lorraine Hitz-Bradley
Lorraine Hitz-Bradley, Administrative Law Judge